

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



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In the Matter of))
))
Tronox Limited,))
a corporation,))
))
National Industrialization Company))
(TASNEE)))
a corporation,))
))
National Titanium Dioxide Company))
Limited (Cristal)))
a corporation, and))
))
Cristal USA Inc.))
a corporation,))
))
Respondents.))
_____)

DOCKET NO. 9377

ORDER ON RESPONDENTS' MOTION TO COMPEL

I.

On May 21, 2018, Respondents Tronox Limited, National Industrialization Company (TASNEE), the National Titanium Dioxide Company Limited, and Cristal USA Inc. (collectively, "Respondents") filed a motion to compel Federal Trade Commission ("FTC") Complaint Counsel to fully respond to Cristal Interrogatory Number 1 ("Motion"). In the alternative, Respondents seek an order limiting Complaint Counsel's contentions and supporting evidence to those referenced in its answer to Cristal Interrogatory Number 1. Complaint Counsel filed its opposition on May 29, 2018 ("Opposition"). For the reasons set forth below, the Motion is DENIED.

II.

Cristal's Interrogatory Number 1 asked Complaint Counsel to:

Identify all adjustments to production levels by [titanium dioxide ("TiO2")]

producers that [y]ou contend were for the purpose of supporting higher prices rather than the result of maintenance or operational issues, including the dates of such conduct, the producer who adjusted its production, the plant at which production was adjusted, the amount by which TiO₂ output was adjusted, the grades of TiO₂ affected, and the amount by which prices were higher than they otherwise would have been (total and for each grade of TiO₂ affected).

Complaint Counsel served responses and objections to Cristal Interrogatory Number 1 on March 1, 2018. Complaint Counsel supplemented its objections and responses to Cristal Interrogatory Number 1, pursuant to Commission Rule 3.31(e)(2), on May 14, 2018, and further supplemented on May 17, 2018. Among other things, Complaint Counsel's answer, as supplemented, set forth ten different time periods and circumstances of TiO₂ production adjustments upon which Complaint Counsel relies. Complaint Counsel's answer further referenced the expert reports of its proffered expert, Dr. Nicholas Hill, and all of the documents and data cited therein – PX5000, PX5002, and PX5004 – as containing Complaint Counsel's answers to Cristal Interrogatory Number 1.

Respondents argue that Complaint Counsel's responses are insufficient because they only provide examples of the subject production adjustments, and that Complaint Counsel's responses left certain parts unanswered. Respondents further argue that Complaint Counsel's objections to the interrogatory are invalid.

Complaint Counsel argues that its responses to Cristal Interrogatory Number 1 are sufficient under the Commission's Rules. Complaint Counsel notes that its answer referenced ten different time-periods and circumstances and that the referenced expert reports and documents and data cited therein sufficiently identify the evidence upon which Complaint Counsel relies in support of its answer to Cristal Interrogatory Number 1.

III.

Commission Rule 3.35(c) allows a party to “specify records from which answers to interrogatories may be derived or ascertained” if the “burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served.” 16 C.F.R. § 3.35(c). Based on a review of the answers provided by Complaint Counsel and the excerpts of its expert's reports in support thereof, Complaint Counsel's responses sufficiently complied with its obligations under the Rules. Therefore, Respondents have failed to demonstrate that a further response to Cristal Interrogatory Number 1 is required. Accordingly, Respondents' motion to compel a further answer to Cristal Interrogatory Number 1 is DENIED.¹

¹ Complaint Counsel acknowledges that it did not specify output reduction information by TiO₂ grade, as requested by Cristal Interrogatory Number 1. Complaint Counsel asserts that it did not provide this information because it did not perform this analysis, based on Complaint Counsel's belief that such analysis is not necessary in order to demonstrate likely competitive effects. Complaint Counsel will be precluded from relying on any analysis that has not been produced in discovery.

See In re North Texas Specialty Physicians, 2004 FTC LEXIS 12 (Jan. 21, 2004), at *4 (denying motion to compel interrogatory responses based on Commission Rule 3.35(c)).

ORDERED:

DM Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: May 31, 2018

Notice of Electronic Service

I hereby certify that on May 31, 2018, I filed an electronic copy of the foregoing Order on Respondent's Motion to Compel, with:

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I hereby certify that on May 31, 2018, I served via E-Service an electronic copy of the foregoing Order on Respondent's Motion to Compel, upon:

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